

WSJ 2-7-9

Capitalism Should Return to Its Roots

By Carl C. Icahn

President Barack Obama's plan to limit executive pay to \$500,000 a year—plus restricted stock—for institutions that get government funding is understandable. Still, salary caps are only a stopgap measure that fails to address the root of the problem.

The real problem is that many corporate managements operate with impunity—with little oversight by, or accountability to, shareholders. Instead of operating as aggressive watchdogs over management and corporate assets, many boards act more like lapdogs.

Despite the fact that managements, with some exceptions, have done an extremely poor job, they are often lavishly rewarded regardless of their performance.

We must change this dismal state of affairs if we are to rebuild our economy in a sustainable way that restores confidence. If we don't, these problems will keep recurring as investors pile into the next Wall Street innovation or asset bubble, enabled by the kinds of managements that nearly sank Wall Street.

The problem, as I have long maintained, is that boards and managements have been entrenched by years of state laws and court decisions that insulate them from shareholder accountability and allow them to maintain their salary-and-perk-laden sinecures.

What we need are fewer government rules at the state level that protect managements. We need to return capitalism—our great national wealth machine—to its roots, where owners call the shots to managements, not the other way around.

Currently, corporate law is largely the province of state governments, not

federal. As a result, most corporations migrate to, and incorporate in, states that offer the most protection for managements.

Management-friendly states have a vested interest in attracting these companies because hosting them generates a substantial portion of state revenues. It's a symbiotic relationship: The state offers management protections and, in return, receives much-needed tax revenue.

However certain states, like North Dakota, offer many more rights and protections to shareholders. Because shareholders own companies, they should have the right to move a company to a

We wouldn't need pay caps if shareholders were given their rights.

state that gives shareholders more protections.

What is needed, therefore, is a federal law that allows shareholders to vote by simple majority to move their company's incorporation to another state. That power is currently vested with boards and management.

This move would not be a panacea for all our economic problems. But it would be a step forward, eliminating the stranglehold managements have on shareholder assets. Shouldn't the owners of companies have these rights?

Now some might ask: If this policy proposal is right, why haven't the big institutional shareholders that control the bulk of corporate stock and voting rights in this country risen up and demanded the changes already?

This is because many institutions have a vested interest in supporting

their managements. It is the management that decides where to allocate their company's pension plans and 401(k) funds. And while there are institutions that do care about shareholder rights, unfortunately there are others that are loath to vote against the very managements that give them valuable mandates to manage billions of dollars.

This is an obvious and insidious conflict of interest that skews voting towards management. It is a problem that has existed for years and should be addressed with new legislation that benefits both stockholders and employees, the beneficiaries of retirement plans.

I am not arguing for a wholesale repudiation of corporate law in this country. But it is in our national interest to restore rights to equity holders who have seen their portfolios crushed at the hands of managements run amok. The suggestions above would do a great deal to change the dynamics of corporate governance in this country. Such a change will make us more productive as an economy, generating more wealth for everyone.

The Wall Street bailout and economic stimulus packages may be unfortunate and necessary steps to revive this flagging economy. But it is important to attack the real problem by demanding more management accountability.

I have initiated United Shareholders of America to empower shareholders to institute changes, and I encourage you to join our cause. A majority of the U.S. population owns shares. Their voices need to be heard—now—on Capitol Hill and in the boardrooms of corporate America.

Mr. Icahn is chairman of Icahn Enterprises, a publicly traded diversified holding company.